

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SIMRATPAL SINGH,)	
)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:16-cv-00399-BAH
)	
ASHTON B. CARTER, et al,)	
)	
Defendants.)	
_____)	

DEFENDANTS’ NOTICE OF ARMY’S ACTION

Defendants, in their official capacities and through undersigned counsel, respectfully respond to the Court’s March 4, 2016, Order directing the Defendants to notify the Court of any action taken on Plaintiff’s request for a religious accommodation. On March 30, 2016, Assistant Secretary Debra Wada, the Assistant Secretary of the Army (Manpower & Reserve Affairs) granted Plaintiff’s religious accommodation request with instructions. *See* Exh. 1. As outlined below, her instructions explain the standards that apply to Plaintiff’s wear of his hair, beard, and turban, while in uniform, until the Army publishes formal standards. She also outlines Plaintiff’s wear of protective equipment when performing non-hazardous duty, and a procedure to evaluate Plaintiff’s accommodation should Plaintiff be assigned or directed to perform hazardous duties. Finally, Secretary Wada provides Plaintiff notice that the Army intends to gather information to develop uniform standards for religious accommodations and therefore intends on re-evaluating Plaintiff’s accommodation in one year if deemed necessary without any further burden on Plaintiff to reapply for an accommodation, absent a change in circumstances such as his assignment to another unit.

First, Secretary Wada explains that the Army's compelling interest in maintaining good order and discipline necessitates that the Army develop clear uniform standards for soldiers who receive a religious accommodation to the Army's uniform and grooming standards. Until such standards are published, Secretary Wada describes the authorized color and wear of the turban. She also provides standards for both the field and garrison environment for the bulk of Plaintiff's beard that can be met by him rolling and tying his beard, as needed to ensure a neat and conservative appearance, consistent with Plaintiff's request for a religious accommodation.

Second, Secretary Wada provides instruction for Plaintiff on the wear of protective equipment when performing non-hazardous duty, and the procedure should Plaintiff be assigned or directed to perform hazardous duties.¹ While performing non-hazardous duties, Plaintiff must wear his hair, beard, and turban in a manner such that it does not impair the proper wear of the Advanced Combat Helmet ("ACH") or other protective equipment. Specifically, Plaintiff is informed that a fully-serviceable ACH means that Plaintiff must wear all of the ACH's component parts in accordance with Army Technical Manuals (*e.g.*, all required pads in the appropriate places).² Before Plaintiff performs hazardous duty, his chain of command must evaluate whether the accommodation should be suspended while he performs those duties. The chain of command will then expeditiously forward their evaluation to Secretary Wada for decision. This evaluation is necessary, in part, because Secretary Wada has been unable to confirm that Plaintiff's personal protective equipment will provide him the intended degree of

¹ Ms. Wada generally defines hazardous duties to be those duties that entitle Plaintiff to hazardous/hardship duty pay.

² See *Technical Manual for Advanced Combat Helmet*, TM 10-8470-204-10 (Def. App'x at 24-78, ECF No. 9-1).

protection during these higher risk situations. Currently, there are no pending requirements for Plaintiff to perform hazardous duty.

Third, Secretary Wada informs Plaintiff that the Army intends on developing standards for soldiers granted religious accommodations, which requires the Army to gather additional information. Accordingly, Secretary Wada is clear that, although she intends to re-evaluate Plaintiff's accommodation in one year, this does not require Plaintiff to submit a new accommodation request at that time. Over the course of the year, Secretary Wada has requested Plaintiff's command to provide her quarterly assessments on any effect the accommodation may have on unit cohesion and morale, good order and discipline, health and safety, as well as individual and unit readiness.³ Of course, Secretary Wada reminds Plaintiff that, if military necessity requires the revocation of the accommodation, that Plaintiff should be prepared to comply with Army uniform and grooming regulations.⁴

Now that Secretary Wada has made a decision regarding Plaintiff's religious accommodation request, Defendants do not believe there is a live case or controversy. As Secretary Wada was not able to assess the compatibility of Plaintiff's safety equipment with his

³ See Department of Defense Instruction ("DODI") 1300.17, *Accommodation of Religious Practices Within the Military Services* (Change 1, January 22, 2014) ¶ 4(c) ("DoD has a compelling government interest in mission accomplishment, including the elements of mission accomplishment such as military readiness, unit cohesion, good order, discipline, health, and safety, on both the individual and unit levels. An essential part of unit cohesion is establishing and maintaining uniform military grooming and appearance standards.").

⁴ See Army Regulation 600-20, *Army Command Policy* ¶ 5-6 ("Accommodation of a Soldier's religious practices must be examined against military necessity and cannot be guaranteed at all times."); see also DODI 1300.17 ¶ 4(j) ("Service members whose requests for accommodation of religious practices are approved will be informed of the specific elements of that approval. Specific elements will include that such approval does not apply for their entire military service commitment and that, at the discretion of the Secretary concerned, new requests for the same accommodation are necessary upon new assignment, transfer of duty stations, or other significant change in circumstances, including deployment.")

religious accommodation, she made a decision using the information currently available to her. She therefore no longer has an immediate need to assess the compatibility of Plaintiff's accommodation with his safety equipment. Further, as was the case with Plaintiff's temporary accommodation, this decision fully accommodates Plaintiff's religious exercise by allowing him to wear a beard, turban, and unshorn hair while in uniform.

Respectfully Submitted,

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DANIEL F. VAN HORN
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BY: _____/s/
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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON DC 20310-0111

SAMR

30 MAR 2016

MEMORANDUM THRU

Commanding General, United States Army Corps of Engineers, 441 G Street, NW
Washington DC, 20314-1000

Commander, 249th Engineer Battalion, 9450 Jackson Loop, Fort Belvoir, VA 22060

FOR CPT Simratpal Singh

SUBJECT: Decision Regarding Request for Religious Accommodation –
CPT Simratpal Singh

1. I have considered your request for a religious accommodation to permit you to wear a beard, turban, and uncut hair in observance of your Sikh faith, along with the recommendations of your chain of command. I grant your request for an exception to Army personal appearance and grooming standards, subject to the limitations described below. A copy of this accommodation will be placed in your Official Military Personnel File.

2. While assigned or performing non-hazardous duties, you may wear a beard, turban, and uncut hair in a neat and conservative manner that presents a professional and well-groomed appearance. The bulk of your hair, beard, or turban may not be such that it impairs your ability to wear the Army Combat Helmet (ACH) or other protective equipment or impedes your ability to operate your assigned weapon, military equipment, or machinery. A fully serviceable ACH including all of its component parts must be worn in accordance with its technical manual to ensure a proper fit for your safety.

3. Because of the Army's strong interest in maintaining good order and discipline, the Army intends to develop clear uniform standards applicable to Soldiers who have received a religious accommodation. Until such standards are published, you may wear a black turban (or under turban, as appropriate) with the Army Service Uniform (ASU), the Army Physical Fitness Uniform, and the Army Combat Uniform (ACU). While wearing ACU outdoors, you may wear a turban (or under turban, as appropriate) of a matching camouflage pattern. Unless your duties, position, or assignment require you to wear the Army Combat Helmet (ACH) or other protective gear, you are not required to wear military headgear in addition to your turban. Your beard must be rolled and tied to a length not to exceed two inches while in garrison and a length not to exceed one inch while in the field, during physical training, or in a deployed environment not covered by paragraph 5 below. Your hair may not fall over your ears or eyebrows or touch the

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SUBJECT: Decision Regarding Request for Religious Accommodation – CPT
Simratpal Singh

collar of your uniform. You may display your rank on your turban, provided you remove the rank in circumstances where military headgear is not customarily worn.

4. Because of the Army's interest in mission accomplishment, which requires military readiness, unit cohesion, good order, discipline, health, and safety on both the individual and unit levels, I have requested that your command provide quarterly assessments of the effect of your accommodation, if any, on unit cohesion and morale, good order and discipline, health and safety, and individual and unit readiness.

5. I have been unable to confirm that your personnel protective equipment (to include ACH and protective mask) provide you with the intended degree of protection against the hazards they are designed to prevent. Should you be assigned or directed to perform hazardous duties (duties for which you would be entitled to receive incentive pay for hazardous duty, special pay for duty subject to hostile fire or imminent danger, hardship duty pay, special pay for service as a member of a Weapons of Mass Destruction Civil Support Team, or hazardous duty incentive pay for flying duty) or to operate in a hazardous environment, continuation of your accommodation will be evaluated by your chain of command. This evaluation will be expeditiously forwarded to me for decision whether to suspend the accommodation during your assignment to hazardous duties or areas.

6. I may withdraw or limit the scope of your accommodation for reasons of military necessity, including if I cannot confirm that Army protective equipment (to include ACH and protective mask) will provide you the intended degree of protection against the hazards presented by the duties or areas to which you will be assigned. Given our intent to gather additional information and develop additional standards, I intend to re-evaluate this accommodation in one year and may reevaluate it earlier based upon military necessity if you must be assigned to another unit. If circumstances require that you be directed to comply fully with AR 670-1, you should be prepared to do so.



Debra S. Wada
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

CF:
Deputy Chief of Staff, G-1
CDR, Human Resources Command